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19 Also Present:

20 Andrew Westle, Esq. (via Zoom)

21 Bryan Robinson, videographer

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1 THE VIDEOGRAPHER: We are on the record.
2 The time is 1:04 p.m. on March 21st, 2022, and this
3 is the continuation of the video deposition for Gina
4 Spearman.

5 Would counsel present please identify
6 themselves for the record.

7 MS. GIBSON: Yes. This is MaryBeth Gibson
8 at The Finley Firm, and I represent Ms. Spearman.

9 MR. PERLOWSKI: Henry Perlowski, Arnall,
10 Golden & Gregory, and I represent New American
11 Funding.

12 MR. HARGROVE: Travis Hargrove attending
13 remotely on behalf of Ms. Spearman.

14 MR. JACKSON: And Nick Jackson attending
15 remotely on behalf of Ms. Spearman.

16 MR. OGLETREE: And Chase Ogletree
17 attending remotely on behalf of NAF.

18 THE VIDEOGRAPHER: Thank you, Counsel.

19 Will the court reporter please swear in
20 the witness.

21 GINA SPEARMAN,
22 having been first duly sworn, was examined and
23 testified as follows:

24 EXAMINATION

25 BY MR. PERLOWSKI:

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1 Q Good afternoon, Ms. Spearman. How are
2 you?

3 A I'm good. Thank you.

4 Q Good.

5 Same rules as last time. If you have
6 any -- if for any reason you don't understand my
7 questions, please let me know. I'll be happy to
8 rephrase it until you do. Okay?

9 A Sure.

10 MR. PERLOWSKI: Same stipulations?

11 MS. GIBSON: Same stipulation.

12 MR. PERLOWSKI: Okay. Great.

13 BY MR. PERLOWSKI:

14 Q Ms. Spearman, do you understand, sitting
15 here today, that you've now brought a fraud claim
16 against NAF with respect to your second amended
17 complaint?

18 A Yes.

19 Q Do you agree that fraud is a serious
20 accusation?

21 A What do you mean by "serious"?

22 Q I mean serious how -- the common
23 understanding of the word. Not casual, serious.

24 MS. GIBSON: Objection, form, foundation.

25 A It is not casual, no.

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1 BY MR. PERLOWSKI:

2 Q How do you contend that you were
3 defrauded, Ms. Spearman?

4 MS. GIBSON: Objection, form.

5 A I was led to -- do you mean in regards to
6 the marketing expenses and pricing exceptions?

7 BY MR. PERLOWSKI:

8 Q I'm asking how you contend you were
9 defrauded, Ms. Spearman. You brought a fraud claim;
10 I'm asking how you contend you were defrauded.

11 MS. GIBSON: Objection, form.

12 A Because my compensation was reduced, and
13 expenses were taken out of my compensation for what
14 I believe to be a false reason, and I was assured it
15 would be for a very short period of time, which it
16 was not.

17 BY MR. PERLOWSKI:

18 Q When you say expenses were taken out of
19 your compensation, what are you referring to?

20 A Marketing expenses and pricing exceptions.

21 Q And marketing expenses that the Southeast
22 region chose to incur were reduced from the
23 Southeast region's profit as of March 1st?

24 MS. GIBSON: Objection, form and
25 foundation.

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1 BY MR. PERLOWSKI:

2 Q Let me rephrase the question. Marketing
3 expenses, if they were incurred by the Southeast
4 region, were charged against the region as of
5 March 1st of 2019?

6 A No, beginning in February of 2019,
7 marketing expenses that were discussed prior to us
8 joining New American Funding was the reason and the
9 basis by us incorporating a marketing budget into
10 the agreement so that we -- that NAF agreed to the
11 marketing expenses that would be done on behalf of
12 the Southeast region. But, no, it was actually
13 deducted from our compensation on the monthly
14 recaps.

15 Q Did that begin as of March 1st of 2019?

16 A It was in February or March. I cannot
17 remember the exact date.

18 Q You said that expenses were taken out of
19 comp for a false reason. What was that false
20 reason?

21 A We were informed at the leadership meeting
22 in February that NAF had misallocated \$30 million,
23 and that they were under financial hardship because
24 of this, that the retail divisions, including the
25 Southeast, although we had thought they all made

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1 money, it was discovered because of this
2 misallocation that they were not profitable, and as
3 a result, they would need to reduce our
4 compensation.

5 Q Who told you that?

6 A Rick Arvielo, Patty Arvielo, Christy
7 Bunce, Jan Preslo, and Jon Reed.

8 Q And this was all at the leadership meeting
9 in February of 2019?

10 A Yes.

11 Q Okay. What were you told was
12 misallocated?

13 A We --

14 MS. GIBSON: Objection, form and
15 foundation.

16 Go ahead.

17 A We weren't given a lot of specifics other
18 than there were expenses that the corporation
19 incurred that were not allocated to the regions and
20 that the number \$30 million was reiterated several
21 times, that --

22 BY MR. PERLOWSKI:

23 Q Okay.

24 A -- it was significant.

25 Q So as you understood it, expenses were

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1 incurred by NAF, but those expenses were not
2 allocated against the regional finances -- the
3 finances for the regions?

4 A It wasn't clear, you know, whose expenses
5 they were, if they were from other divisions, other
6 companies, other channels. It was just simply there
7 were expenses not allocated properly that caused a
8 huge swing in the bottom line P&Ls for the retail
9 division and, of course, more specifically that we
10 were concerned about, the Southeast division.

11 Q Did you ever learn subsequent to the
12 leadership meeting -- either at the leadership
13 meeting or subsequent to it whether those
14 expenses -- the expenses that were misallocated,
15 whether they were actually incurred?

16 A I was never given any information that
17 they were incurred.

18 Q Were you ever given any information that
19 the expenses that were said to be misallocated were
20 not incurred?

21 A I was never given any further information
22 after the leadership meeting.

23 Q One way or the other; is that correct?
24 I'm just trying to understand whether --

25 A Sure.

1 Q So you hear at the leadership meeting that
2 expenses were misallocated. Okay?

3 A Uh-huh.

4 Q So would you agree with me that
5 misallocation, just in a common understanding of
6 what that means, is that something's put in the
7 wrong place?

8 MS. GIBSON: Objection, form.

9 BY MR. PERLOWSKI:

10 Q Would you agree with me that mis- -- if
11 you misallocate something, it generally means that
12 it's in the wrong place?

13 A It's in a different place.

14 Q Okay. Did you learn either at the
15 leadership meeting or thereafter, whatever expenses
16 were misallocated, did you ever learn what place
17 they were in?

18 A No.

19 Q Ms. Spearman, at the time of the
20 leadership meeting -- and you were deposed for quite
21 a while when we did this the last time, and I know
22 you -- I recall you testifying generally, and your
23 testimony will speak for itself, that occasionally
24 Mr. Reed would share some financial information with
25 you and Ms. Allison.

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1 What I'm trying to understand is what you
2 in your position with NAF as of February of '19,
3 what you had access to.

4 So from a financial reporting perspective
5 as of February 2019, what did you have access to?

6 A We had access to a platform called Kevlar
7 that was primarily for -- you know, we could check
8 pricing exceptions and things like that. We were
9 provided, I would say, an occasional P&L that was
10 more -- because we weren't paid based off of a P&L,
11 it was almost more of an FYI at maybe a biannual,
12 you know, leadership meeting or something going over
13 the Southeast division. It was generally presented
14 for the purpose of saying what a great job we're
15 doing, look how profitable you are.

16 But I was generally given those -- we were
17 given those in person, you know, when we were at a
18 meeting or something.

19 Q So the P&Ls that you mentioned were
20 occasionally given to you, who do you recall
21 typically would give those to you?

22 A To my recollection, Jon Reed.

23 Q The P&Ls that were -- and I'll get to the
24 Kevlar in a moment. I'm not asking about Kevlar for
25 right now.

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1 The P&Ls that were occasionally given to
2 you -- let's assume that they were given to you by
3 Mr. Reed -- were they regional -- were they
4 Southeast region P&Ls? Were they company-wide P&Ls?
5 Were they outside retail P&Ls?

6 A Southeast.

7 Q Let's go to -- you mentioned earlier that
8 you had access to Kevlar. This may be some
9 terminology, but I want to ask you if you recall
10 whether you had -- did you have access to CM1 in
11 Kevlar?

12 MR. PERLOWSKI: That's C-M-1.

13 MS. GIBSON: Objection, foundation.

14 Go ahead.

15 BY MR. PERLOWSKI:

16 Q Sure.

17 A I don't remember what we had access to in
18 Kevlar as it relates to P&Ls. I really just
19 remember Kevlar being more so for the purpose of
20 checking pricing. But the P&Ls that I recall
21 seeing, I do remember the bottom line -- what I
22 would consider to be the bottom line number was
23 referenced as CM1.

24 Q So you may have just answered my
25 question -- my next question, but let me make sure I

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1 understand it.

2 Do you believe that when you had access to
3 Kevlar that you had access to P&Ls?

4 A I do not recall ever viewing or retrieving
5 a P&L from Kevlar.

6 Q In your answer a couple questions ago, I
7 think you did mention CM1 in your answer. The
8 record obviously will speak for itself.

9 But do you recall whether you had access
10 to CM1 in Kevlar?

11 A I do not recall.

12 Q Do you recall whether you had access to
13 CM2 in Kevlar?

14 MS. GIBSON: Objection, foundation.

15 A I don't recall.

16 BY MR. PERLOWSKI:

17 Q Okay. Do you recall whether you had
18 access to CM3 in Kevlar?

19 A I don't recall that.

20 Q Okay. You mentioned that Mr. Reed would
21 typically give you the Southeast region P&Ls when
22 you were given a physical document.

23 Do you recall ever receiving, prior to the
24 leadership meeting, company-wide P&Ls that would
25 show, for example, how profitable NAF was as a whole

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1 at a given time or in a given year?

2 A No.

3 Q So I'm going to use 2018 as an example
4 because you know the leadership meeting was in
5 February '19.

6 So as of the end of 2018, were you given
7 any information that demonstrated how profitable NAF
8 was as a whole?

9 A No.

10 Q Did you have any knowledge prior to the
11 leadership meeting as to what NAF's profitability
12 was shown in CM1 as of the end of 2018?

13 A No. My recollection late in 2018,
14 possibly November, we were there for regional
15 meetings, and I just remember the general consensus
16 was positive, that the entire retail division was
17 doing very well, everyone was very pleased, and the
18 Southeast was -- by far led the company in
19 profitability, but that all the regions were doing
20 well.

21 Q Get to that in a second.

22 MR. PERLOWSKI: Could you please read back
23 my last question?

24 (The record was read by the reporter as
25 follows:

1 "Q Did you have any knowledge prior to
2 the leadership meeting --")

3 MR. PERLOWSKI: Okay.

4 BY MR. PERLOWSKI:

5 Q Did you have any knowledge prior to the
6 leadership meeting as to what NAF's profitability
7 for 2018 was showing in CM2?

8 A No.

9 Q Did you have any knowledge prior to the
10 leadership meeting as to what NAF's profitability
11 was showing in CM3 for 2018?

12 A No.

13 Q So when it was, as you testified, it was
14 explained to you that certain expenses were incurred
15 but weren't allocated to the regions, were you told
16 what kind of expenses were incurred by NAF but
17 weren't being allocated to the regions?

18 A No. And the P&Ls that we did see had all
19 your usual and customary expenses.

20 Q When you said the P&Ls that you did see,
21 what are you referring to?

22 A When I mentioned earlier from time to time
23 Jon Reed or Christy Bunce would share a P&L with us,
24 I had seen P&Ls throughout my career, so the
25 expenses that were on the P&L were the usual and

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1 customary expenses. So it wasn't as if anything
2 were missing, so that's why it was pretty much
3 alarming to all of us at the meeting that there
4 would be expenses that had not been allocated to our
5 regions.

6 Q When you say the P&Ls that you were shown
7 had all of the customary expenses, you mean in terms
8 of the categories of expenses that are listed on the
9 P&L?

10 MS. GIBSON: Objection, form.

11 A Categories, and I would say the actual
12 amounts were industry -- pretty industry norms.

13 BY MR. PERLOWSKI:

14 Q Did you ever -- did you ever have any --
15 were you ever given any detail behind the amounts
16 that were shown in the P&Ls that were given to you?

17 So, in other words, if you were given a
18 P&L by Mr. Reed --

19 A Uh-huh.

20 Q -- P&L has various numbers allocated to
21 accounts, were you given any detail behind those
22 numbers to show what they represented?

23 A Only if we asked.

24 Q Okay. And did you ask?

25 A I can't remember any specific times, but I

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1 do know that on occasion, we asked for backup on
2 certain line items, but I could not remember
3 specifics.

4 I remember there being discussion about
5 the fact that there wasn't a system to allow us to
6 easily look at the backup, that it had to be
7 manually -- had to be asked for and manually
8 provided.

9 Q Okay. Did you ask for backup at the
10 February '19 leadership meeting for the expenses
11 that were incurred but were not allocated to the
12 regions?

13 A We did not.

14 Q So to your knowledge at the leadership
15 meeting, you didn't have any understanding as to
16 whether NAF's profitability was shown as being
17 different in CM1 versus CM2 versus CM3.

18 You didn't have any knowledge one way or
19 the other, correct?

20 MS. GIBSON: Objection, form and
21 foundation.

22 A No.

23 BY MR. PERLOWSKI:

24 Q At the leadership meeting in terms of
25 NAF's actual financial position company-wide, what

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1 were you told?

2 At 2018's financial position company-wide,
3 what were you told?

4 A At the meeting?

5 Q Yes.

6 A That the financials that had been provided
7 to date did not have all -- the misallocation of
8 \$30 million that had not been allocated to the
9 regions. That NAF was in -- on financial hard times
10 and that they were asking -- they were telling the
11 regionals that they would have to reduce their
12 compensation for the marketing expenses and pricing
13 exceptions. And that they were asking for our
14 cooperation in this and that it would only be for a
15 short period of time because they were going to hire
16 a CFO because to date at that point they did not
17 have a CFO. And they felt as if some of the
18 financial issues with this misallocation and other
19 things were the result of not having someone in that
20 role, and that they were going to hire one to
21 rightsizes the company, and that things would go back
22 to normal as soon as they were able to do this.

23 Q Okay. Let me go back.

24 Were you ever given, for example, a
25 number, like, as of the end of 2018, NAF's profit or

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1 loss is X dollars?

2 Were you ever given a number at the
3 leadership meeting?

4 A No.

5 Q Did you have an understanding at the
6 leadership meeting as to whether NAF was profitable
7 or not in 2018?

8 Not -- I understand what you testified
9 about financial hard times, but I'm just trying to
10 understand. Did you have an understanding whether
11 NAF made money or lost money in 2018?

12 A They were representing that although in
13 December when they closed out the books they were
14 profitable that they were now not profitable was
15 what they represented. In February they represented
16 that they were not profitable, whereas they thought
17 they had been.

18 Q Do you have any reason to believe whether
19 that understanding that NAF -- was incorrect?

20 The understanding that NAF was not
21 profitable in 2018, in February of '19, do you have
22 any understanding as to whether that was not true?

23 MS. GIBSON: Objection, form.

24 Go ahead.

25 A It was very hard to believe.

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1 BY MR. PERLOWSKI:

2 Q Okay.

3 A It was hard to believe for all of the
4 regionals given the fact that the COO, the EVPs,
5 everyone was shocked by this information. So it
6 made it hard to believe that they weren't
7 profitable.

8 Q You said that you were told that the
9 regions were being asked -- and this is all regions,
10 right, were being asked for their cooperation?

11 A Yes.

12 Q You were told that they were asking for
13 cooperation for a period of -- a short period of
14 time until NAF hired a CFO?

15 A Correct.

16 Q Were you told anything in the leadership
17 meeting as to what the status of that CFO search
18 was?

19 A That it was their top priority, they had
20 several candidates, and that, you know, they were
21 going to do it as quickly as possible.

22 Q Were you given a -- so as of the
23 leadership meeting, you understood that the CFO
24 search had already begun?

25 A I believe so.

1 Q At the leadership meeting, did you have an
2 understanding that NAF had already identified
3 candidates for the CFO position?

4 A I can't recall if it was at the meeting or
5 shortly thereafter that it was communicated to us
6 that they had candidates, and they quickly hired
7 someone, so I can't say for sure --

8 Q You mean --

9 A -- if they mentioned it at the meeting or
10 not.

11 Q Sorry to interrupt.

12 You mean quickly hired someone after the
13 leadership meeting?

14 A Uh-huh.

15 Q Mr. Frommert?

16 A Correct.

17 Q Okay.

18 A There was obviously a lot of concern by
19 all the regionals and the executives about what was
20 happening, you know, was this even accurate since
21 they didn't have a CFO, was it possible that, you
22 know, this -- this loss that they believe they now
23 had that was resulting in them needing to, you know,
24 reduce all of our compensation, you know, was it
25 accurate given -- you know, maybe there's just an

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1 error in the accounting.

2 Q Right.

3 Did you ever learn prior to your
4 resignation from NAF whether there was an error in
5 the accounting that -- we'll just leave it at that.

6 A I was never given any proof
7 documentation-wise. There was lots of conversation
8 amongst regionals, amongst -- once Scott came on and
9 started working on the new comp plan, there was much
10 conversation about that things were not done
11 correctly and should be done differently, those
12 sorts of things.

13 Q Were you ever given any information after
14 the leadership meeting that led you to believe that
15 NAF's statements that it was not as profitable as it
16 thought it was was incorrect?

17 MS. GIBSON: Objection, form.

18 A Can you give -- can you say the question
19 again?

20 BY MR. PERLOWSKI:

21 Q Sure.

22 So you testified at the February
23 leadership meeting you were told that NAF was not as
24 profitable as NAF thought it was --

25 A Right.

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1 Q -- right?

2 After the leadership meeting, were you
3 ever given any indication -- were you ever given any
4 information that led you to believe that NAF's
5 statements that it wasn't as profitable as it
6 thought it was were false when they were made?

7 MS. GIBSON: Objection, form.

8 Go ahead.

9 A NAF did not provide me with any
10 information. Again, applying common sense, general
11 industry norms, can't speak for the company at
12 large, what I can speak to is that the Southeast
13 region, based on our book of business, the volume of
14 business, should have been highly profitable.

15 BY MR. PERLOWSKI:

16 Q Okay. But that wasn't my question.

17 My question was specific: Were you given
18 any information from NAF after the February
19 leadership meeting that led you to believe that
20 NAF's statement that it was not as profitable as it
21 thought it was was false when that statement was
22 made?

23 MS. GIBSON: Objection, form, asked and
24 answered.

25 A And when you say from NAF --

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1 BY MR. PERLOWSKI:

2 Q Yes.

3 A -- who do you mean?

4 Q Anyone.

5 A There was much conversation around -- from
6 regionals that -- no facts. I mean, it was just
7 simply that the expenses that maybe were now trying
8 to be allocated to the regions weren't really retail
9 expenses, they were other businesses or other
10 channels, and that they didn't -- they weren't
11 incurred by the regions.

12 Q When you're referring to other businesses,
13 are you referring to other businesses within NAF
14 aside from retail?

15 A Yes.

16 Q Okay. When you say other channels, are
17 you also referring to other channels within NAF
18 that's not retail?

19 A Correct.

20 Q Okay. So is it fair to say then that the
21 conversation or the speculation was that expenses
22 that were being incurred outside of retail were
23 being allocated to retail?

24 MS. GIBSON: Objection, form and misstates
25 testimony.

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1 Go ahead.

2 MR. PERLOWSKI: Please repeat the
3 question.

4 (The record was read by the reporter as
5 follows:

6 "Q So is it fair to say then that the
7 conversation or the speculation was that
8 expenses that were being incurred outside of
9 retail were being allocated to retail?")

10 MS. GIBSON: Same objection.

11 A There was that speculation amongst many
12 regionals.

13 BY MR. PERLOWSKI:

14 Q Did you ever receive any specific
15 information that confirmed whether that speculation
16 was, in fact, true with respect to any specific
17 expense?

18 A We were never given any detail -- of the
19 \$30 million that was misallocated, we were never
20 given any detail of those expenses.

21 Q You mentioned the cooperation was going to
22 be for a short period of time, that NAF was going to
23 hire a CFO, was going to sort of rightsize the
24 company.

25 When were you told when that sort of --

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1 the cooperation for the short period of time, when
2 were you told it was going to end or the request for
3 cooperation was going to end?

4 A Most of the conversation around the short
5 time frame came from Rick and Patty Arvielo but
6 primarily Patty. It was discussed a lot on the trip
7 that Rick and Patty made to Atlanta to visit with
8 Kelly and I after the leadership meeting to reassure
9 us that they were going to get their
10 accounting/financial issues resolved, and that --
11 that's when the 90 days was mentioned several times,
12 that they believed it would be for a period of 90
13 days that we would absorb the pricing exceptions and
14 marketing costs.

15 Q Okay. So the conversations that you just
16 referenced, Ms. Spearman, these were in the meetings
17 in Atlanta that followed the leadership meeting?

18 A Yes.

19 Q Okay. So let me just sort of stick to the
20 leadership meeting discussions first.

21 A Sure.

22 Q So I just want to compartmentalize when
23 certain conversations occurred.

24 So at the leadership meeting itself, the
25 February '19 leadership meeting, were you -- at that

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1 meeting, you were told that the cooperation was
2 being requested for a short period of time?

3 A Correct.

4 Q Okay. At that meeting, were you given any
5 indication as to how long that period of time might
6 be at the leadership meeting?

7 A I cannot recall if I was given a specific
8 date then.

9 Q Okay. Okay. Refresh my recollection,
10 Ms. Spearman, as to how the meetings in Atlanta --
11 when did those occur relative to the leadership
12 meeting, like, just in terms of time frame?

13 A I am not certain. I believe it's in the
14 e-mails that we've shared in discovery, but it was
15 in the March to April time frame.

16 Q Okay.

17 A I would say within 60 days or so of the
18 leadership meeting.

19 Q So you mentioned in your prior answer in
20 the trip in Atlanta, whenever that occurred,
21 March-April of '19, that Rick Arvielo and/or Patty
22 Arvielo referenced 90 days.

23 What did they say?

24 A Yes. Sorry, I was nodding instead of
25 saying "yes."

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1 Q Sorry. I -- I saw that and didn't even
2 think twice of it.

3 A Sorry. My answer is "yes" to that.

4 Q Yes.

5 A And we were very concerned, "we" being
6 Kelly and I.

7 Q Right.

8 A All the regionals were concerned, but
9 obviously I know a lot more about mine and Kelly's
10 experience. And we were very concerned about, you
11 know, the stability of the company, A, and, B, you
12 know, the fact that if our book of business wasn't
13 profitable here, that was a big concern.

14 But we wanted to be part of the solution
15 if it was for a temporary period of time. You know,
16 we wanted to make things work. We had a lot
17 invested, time and money. We had brought so many
18 people over, over a hundred people. We were up to
19 over 200 employees at this point, referral partners,
20 everything. So we were very vested in making it
21 work.

22 So when they came into town, they were
23 there, I believe, to reassure us that they were
24 working very quickly to get it resolved and that
25 things would go back to normal. And I interpreted

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1 that to mean we would go back to normal on our
2 normal comp plan whereby we had our marketing budget
3 and they were absorbing the marketing -- the pricing
4 exceptions as they had up to that point.

5 MR. PERLOWSKI: Could you please read my
6 question back?

7 (The record was read by the reporter as
8 follows:

9 "Q So you mentioned in your prior answer
10 the trip in Atlanta, whenever that occurred,
11 March-April of '19, that Rick Arvielo and/or
12 Patty Arvielo referenced 90 days. What did
13 they say?")

14 BY MR. PERLOWSKI:

15 Q Okay. So you told me a lot about what
16 your understanding was, but I want to understand --

17 A What they said?

18 Q -- what they said.

19 A They said, hang in there with us, we're
20 going to get this resolved, and this is only going
21 to last for 90 days with you having to absorb these
22 costs.

23 Q So was it your understanding that it was
24 90 days from the day of your conversation with them?

25 A I don't know what date they meant.

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1 Q Okay. So when they said it'll be 90 days
2 that you'll have to absorb these costs, your
3 understanding was that for at least for 90 days
4 going forward, the Southeast region was going to
5 have to continue to absorb the marketing expenses
6 and pricing exceptions?

7 A I don't know how to answer that. I don't
8 know -- I can't speak to what they --

9 Q No, I'm trying to understand what you --
10 what you understood.

11 So whenever that conversation occurred,
12 was it your understanding that for the next 90 days,
13 you were going to have to incur the marketing
14 expense and pricing exception costs?

15 A The conversations were this is going to be
16 temporary, and the 90 days was used as a frame of
17 reference for temporary. But there was never, like,
18 an end date discussed or a start date, for that
19 matter.

20 Q Was it your understanding that during the
21 temporary period of time that the Southeast region
22 was going to have to absorb the marketing expense
23 and pricing exception costs?

24 A Was it my understanding that we were going
25 to have to absorb them?

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1 Q During the temporary period of time.

2 A Yes.

3 Q Okay. Now, when Mr. -- when the meeting
4 with the Arvielos happened in Atlanta, was a CFO
5 hired at that time yet, if you know?

6 A I don't recall.

7 Q Okay. When the -- you mentioned that
8 the -- and, again, your testimony will speak for
9 itself, but you said that the 90 days was kind of a
10 frame of reference for the temporary period of time.
11 I think that's essentially what you said.

12 Was there any discussion at the time as
13 to, like, what things needed to happen, you know,
14 over the next weeks and months to sort of convert --
15 you know, actually end the period of time where the
16 regions were going to be absorbing these costs?

17 A It wasn't really clear, just that they
18 needed help rightsizing the company, and they felt
19 like that was going to be an adequate amount of time
20 for them to do so.

21 Q They were projecting what they thought was
22 going to be an adequate amount of time to do that,
23 to rightsize the company, is that what you
24 understood?

25 A You'd have to ask them.

Page 308

1 Q Okay. Did you ever have a conversation
2 with the Arvielos about whether the costs that the
3 regions were going to have to be absorbed would ever
4 be paid back to the regions?

5 A No.

6 Q Was there any discussion at the leadership
7 meeting in February of '19 as to whether any of the
8 costs that the region were going to absorb would
9 ever be paid back to the regions?

10 A No.

11 Q Did you ever approach anyone at NAF, let's
12 say 90 days after your meeting with the Arvielos,
13 whenever that occurred? So if the meeting was in
14 March, it would be sometime in June; if the meeting
15 was in April, it would be sometime in July.

16 After 90 days from that meeting, did you
17 ever approach anyone at NAF about why the policy
18 change with respect to marketing expenses and
19 pricing exceptions was still in place?

20 A Yeah, there's various e-mails on the
21 subject.

22 Q And what you were you told?

23 A Once Mr. Frommert was hired, it was --
24 much of the conversation was about moving to the
25 different compensation model, that it would still

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1 have an override component and that it would have a
2 profit component. And the conversations were around
3 we're getting that together as quickly as possible,
4 and your marketing budget and pricing exceptions
5 would be reinstated with that new compensation
6 structure.

7 Q At the February '19 leadership meeting,
8 was there any discussion about moving to a profit
9 and loss compensation model? This is at the
10 February '19 leadership meeting.

11 A I believe there were regionals maybe --
12 best of my recollection -- I can't be sure -- I
13 believe there were regionals that maybe discussed
14 that type of model, but that wasn't the purpose of
15 the meeting. The meeting -- purpose of the meeting
16 was to discuss the misallocation and to cut our
17 compensation.

18 Q So at -- understanding that there were
19 discussions, you know, that there were regional
20 discussions -- and I'm sure people were talking to
21 each other. I mean, human nature, big changes are
22 made, people are going to talk to each other.

23 But from NAF announcing changes to the
24 regions, did NAF announce at the February leadership
25 meeting that it was going to be changing the

Page 310

1 compensation model going forward to include a profit
2 and loss component?

3 A I don't recall.

4 Q So you mentioned that after Mr. Frommert
5 was hired, the discussion sort of veered into --
6 "veered" is my word, not yours, but veered into
7 moving to a different compensation model.

8 At that time when that was being
9 discussed, did you ever say, okay, but it's been --
10 you know, it's been more than 90 days that our
11 marketing expenses, pricing exceptions, that we're
12 absorbing those, are you going to, you know,
13 reinstate the prior policy while you're looking at
14 this new compensation model?

15 MS. GIBSON: Objection, form.

16 BY MR. PERLOWSKI:

17 Q Did you ever say anything like that?

18 A Many times.

19 Q And what were you told?

20 A We're working on it. We'll get back to
21 you.

22 Q After the February leadership meeting, did
23 anyone ever tell you that NAF was going to pay the
24 regions' marketing expenses as it had done before
25 the leadership meeting?

Page 311

1 A Yes.

2 Q Who?

3 A Christy, Jan, Jon, Rick and Patty.

4 Q Tell me -- tell me what they said.

5 A What I've already stated, that we are
6 working on clearing up and cleaning up our
7 accounting. We just need your help for a temporary
8 period of time, and things will go back to normal.

9 Q Okay. Other than saying things would go
10 back to normal, did anyone ever tell you after the
11 February '19 leadership meeting that NAF was, in
12 effect, reinstating its prior policy with respect to
13 marketing expenses?

14 MS. GIBSON: Objection, asked and
15 answered.

16 A They stated on many occasions that they
17 would go back to the prior policy.

18 BY MR. PERLOWSKI:

19 Q When? As of when?

20 A When did they say it, or when did they say
21 it was going back into effect?

22 Q The latter.

23 A They never gave a date.

24 Q Okay. As of March 1st of 2020, how did
25 NAF handle regional marketing expenses?

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1 A I'm sorry, can you repeat the question?

2 Q Yeah.

3 So we know that in March -- on March 1st
4 of 2020, shortly before you resigned, a new
5 compensation model was put into effect.

6 A Uh-huh.

7 Q Under that new model, how were regional
8 marketing expenses handled?

9 A From my memory, to the best of my
10 recollection there was a budget given for marketing
11 expenses, and anything exceeding that budget was
12 then a part of the split of profitability, which, in
13 our case was, like, a 50-50 split.

14 Q And as of March 1st of 2020, how were
15 pricing exceptions handled?

16 A To the best of my memory, again, a budget
17 or a tolerance was put into place, and anything that
18 exceeded that would then be a shared expense between
19 NAF and Kelly and myself, which was 50-50.

20 Q With respect to marketing expenses, it was
21 also going to be a shared expense if there was an
22 overage of the budget?

23 A Yes.

24 Q And the shared expense would be between
25 NAF and the region?

Page 313

1 A Yes. I think you have a copy of the
2 agreement. I think it's spelled out.

3 Q So after the leadership meeting in
4 February of 2019, did you and Ms. Allison ever
5 discuss whether you were going to continue to incur
6 marketing expenses on behalf of the region?

7 A We discussed that we had to. It was
8 commitments that had been made to loan officers and
9 referral partners, so there really was no choice.

10 Q Did you discuss whether you were going to
11 reduce any of those commitments?

12 A Not that I recall.

13 Q Did you discuss whether you were going to
14 reduce any -- when I say "discretionary marketing
15 expense," I don't mean, like, okay, you've made a
16 contractual commitment that you're going to spend,
17 you know, \$30,000 on a specific date. That's a --
18 I'm not talking about a contractual commitment.

19 Discretionary expense, I mean, like, if I
20 go to the mall after we leave this deposition today,
21 I can decide whether I want to buy something or not,
22 right?

23 Did you ever have any discussion with
24 Ms. Allison about whether you were going to reduce
25 any discretionary marketing expenses after the

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1 leadership meeting?

2 MS. GIBSON: Objection, form and
3 foundation.

4 A To my recollection, most of our marketing
5 expenses were either contractual or commitments,
6 meaning they were either contracts, like our TV show
7 that had a one-year contract, or they were
8 association memberships that had contracts, or they
9 were loan officer marketing expenses that were
10 either in the loan officer's contract with NAF, or,
11 at a minimum, verbal commitments on our part. So I
12 didn't feel like much of it was discretionary if we
13 were going to honor our word.

14 BY MR. PERLOWSKI:

15 Q Do you recall ever having any
16 conversations with anyone at NAF about that your
17 region had certain contractual commitments that it
18 had to make and how those contractual marketing
19 commitments were going to be addressed under the new
20 policy?

21 A I remember discussing Atlanta's Best New
22 Homes. There were even e-mail exchanges in the
23 discovery in which we asked would they pay for that
24 since it was a contractual agreement that NAF had
25 made to the TV show, and we were told no, that

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1 either -- that we would have to pay that. There was
2 no "either." We would have to pay it.

3 Q With respect to pricing exceptions, did
4 you ever have any discussions with Ms. Allison about
5 not improving -- not approving pricing exceptions
6 after the leadership meeting or even approving fewer
7 pricing exceptions?

8 A From what I recall, we discussed what our
9 options were on many -- you know, many levels,
10 obviously, given the difficult situation we were in.
11 And I think the conclusion that we came to was we
12 would lose business and/or lose loan officers if we
13 did not continue to approve the pricing concessions
14 as we had been.

15 Q I just want to make sure I understand
16 something.

17 So if a pricing exception loan was made,
18 would you still receive a bonus on that loan?

19 A We would receive our override bonuses,
20 some of them, but then a deduction would be made to
21 our compensation for that. So it was almost like
22 you get it and then subtract from it.

23 Does that make sense?

24 Q Sure. And I may have been just trying to
25 understand, would the deduction typically mirror the

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1 amount of the override bonus, or would -- in other
2 words, how did the deduction and the bonus relate to
3 each other?

4 A Have you seen any of the monthly recaps?

5 Q Yeah. Yeah.

6 A So it's spelled out on there.

7 Q Okay.

8 A I'm happy to try to explain it --

9 Q What's your understanding? I can look at
10 a recap. What's your understanding in terms of --
11 so pricing -- you decide, say, April of '19 we're
12 going to go ahead and make a loan that's, you know,
13 above the tolerance, you receive -- would the
14 deduction effectively mirror the bonus that you
15 would have received on the loan?

16 MS. GIBSON: Objection, form.

17 A No.

18 BY MR. PERLOWSKI:

19 Q Okay.

20 A It could be less than or more than.

21 Q Okay.

22 A It's specific to the, you know, exact
23 amount of the concession on that loan.

24 Q Right.

25 So is it your understanding that NAF's

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1 policy change that it announced at the leadership
2 meeting with respect to marketing expenses, is it
3 your understanding that that policy change remained
4 in effect until March 1st of 2020?

5 A Are you asking did the change that they
6 made in February of '19 stay in effect until March
7 of 2020?

8 Q Yes.

9 A The deductions stayed in place, yes.

10 Q Until March 1st of 2020?

11 A Yes.

12 Q And then the new compensation model went
13 into effect on March 1st of 2020?

14 A Yes.

15 Q So the policy change was in place for
16 about a year?

17 A It wasn't a policy change in writing. It
18 was just a deduction that they took from our pay
19 during that time period for both of those items.

20 Q The announcement that regional marketing
21 expenses would be deducted against the region, that
22 was in place for about a year?

23 A From February of '19 to March of '20, yes,
24 what, a year and a month.

25 Q Leadership meeting was, like, the

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1 11th-12th of February?

2 A Can't say for sure. Sounds about right.

3 Q I believe in your prior testimony, which,
4 again, will speak for itself, I thought you
5 testified that the changes that were announced were
6 pro- -- were announced effective as of March 1st.

7 Does that ring a bell?

8 A I don't remember the exact effective date.

9 Q Okay.

10 A But it's in the e-mails and all the
11 documentation.

12 Q Yeah. Right.

13 And the change in the pricing exceptions
14 tolerance, that lasted -- that was in effect for
15 about a year?

16 A Yes.

17 Q Under -- before the leadership meeting,
18 NAF still had pricing exception tolerances in place,
19 right?

20 A There wasn't -- there wasn't many pricing
21 exceptions that -- other than, like, they had
22 something where basically no one would get paid.
23 Like, the loan officer wouldn't get paid, the
24 manager wouldn't get paid. They had -- and I can't
25 remember what that was called. Those were the only

1 times in which we had to participate in a pricing
2 exception prior to February of 2019.

3 Q So tell me the circumstances in which you
4 had to participate in a pricing exception before the
5 leadership meeting.

6 A Basically, when you submitted or approved
7 a pricing concession that was what at the time the
8 lock desk believed to be higher than they wanted to
9 do, then they would just say, hey, we can do this
10 one, but manager's not going to get paid, loan
11 officer's not going to get paid.

12 Q Okay. And you would then approve that
13 knowing that you wouldn't effectively be paid on
14 that loan?

15 A I'm trying to remember how it would
16 happen. Yeah, there would just be an e-mail
17 exchange of, you know, this is -- this is what's
18 going to happen on this loan.

19 Q So --

20 A There were a handful probably over --

21 Q So for those occasions, so either you
22 could either decide not to make the loan or approve
23 it understanding that you would not be paid on that
24 loan, meaning the -- "you" being the regional
25 manager?

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1 A Yeah, it would be for something like -- it
2 wouldn't be for a competitive situation. It would
3 be for loan officer error, someone made a mistake.
4 You know, it was just, like, a very big
5 exception-type situation. There was probably a
6 handful of times it happened between November of '16
7 and February of '19.

8 Q And in the handful of times it happened,
9 you could decide to approve it knowing you wouldn't
10 get paid on it?

11 A It was never a situation in those
12 situations of -- that we weren't going to do it.

13 Q Okay. But when you did do it, you
14 understood you weren't going to get paid on that
15 loan, correct?

16 A It was usually a situation where the loan
17 officer had either made a mistake or there was a
18 severe customer service issue, so the loan officer
19 would agree that they weren't getting paid, yes. I
20 don't recall us ever having to, like, approve that.
21 I remember the loan officer did.

22 Q Okay. So when the loan officer would
23 approve the pricing exception but you -- on the
24 regional manager side, would you be paid still --
25 would you still be paid on that loan?

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1 A I don't think anybody would get paid --

2 Q Okay.

3 A -- on those rare instances.

4 Q Okay. Did anyone give you a specific time
5 frame as to how long NAF expected it was going to
6 take to hire a CFO?

7 A Just that it was a top priority and within
8 90 days, I guess.

9 Q You said it was a top priority.

10 When you said "within 90 days," who told
11 you that NAF was going to hire a CFO within 90 days?

12 A Rick and Patty Arvielo, Christy Bunce.

13 Q When did Rick or Patty Arvielo tell you
14 that NAF was going to hire a CFO within 90 days?

15 MS. GIBSON: Objection, asked and
16 answered.

17 A After the February -- we had a dinner
18 during the February leadership meeting. I remember
19 it being discussed by Rick and Patty to all of us at
20 the dinner, and then Rick and Patty also said it
21 when they came to Atlanta.

22 BY MR. PERLOWSKI:

23 Q So at the dinner during the leadership
24 meeting, did either Rick or Patty Arvielo say that
25 NAF was going to hire a CFO within 90 days?

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1 A I believe so.

2 Q What specific words do you recall them
3 using?

4 A I don't remember specific words.

5 Q Did they say, we hope to hire a CFO within
6 90 days, we are going to hire a CFO within 90 days,
7 we're going to hire a CFO as soon as possible, it's
8 a top priority?

9 A All those.

10 Q And then in the Atlanta meeting, what did
11 they say with respect to the hiring of a CFO?

12 A That they felt the solution to this
13 financial problem was to get the CFO hired, they had
14 people already interviewing, they were already
15 talking to people, and that they believed they were
16 going to be able to hire someone very, very soon.

17 Q And they did -- and they did hire -- NAF
18 did hire a CFO within 90 days of the leadership
19 meeting?

20 MS. GIBSON: Objection, foundation.

21 A I don't have his hire date.

22 BY MR. PERLOWSKI:

23 Q Okay. Sounds about right, generally?

24 MS. GIBSON: Same objection, speculation.

25 A I don't -- yeah, speculation. I don't

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1 know for sure the date, but --

2 BY MR. PERLOWSKI:

3 Q Do you recall when Mr. Frommert joined
4 NAF?

5 A I do not.

6 Q Did anyone tell you about how long it
7 would take NAF to develop a P&L model of
8 compensation?

9 A No.

10 Q Did you understand that NAF was going to
11 attempt to develop a P&L model of compensation after
12 it hired a CFO?

13 MS. GIBSON: Objection, speculation.

14 BY MR. PERLOWSKI:

15 Q I'm asking for your understanding.

16 A My recollection was the P&L plan --
17 compensation model discussion came about after Scott
18 was hired.

19 Q Do you recall any discussion of the P&L
20 model of compensation being something that NAF
21 wanted to implement before Mr. Frommert was hired?

22 A I can't say for sure.

23 Q Okay.

24 (Defendant's Exhibit 24 was marked for
25 identification.)

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1 BY MR. PERLOWSKI:

2 Q Ms. Spearman, I'm going to show you what's
3 been marked as Exhibit 24 to your deposition, and
4 this is an e-mail exchange in February of 2019, and
5 I want to call your attention to the second page.
6 Just let me know when you're there.

7 A You want me to read it?

8 Q I'm going to ask you a couple questions
9 about your e-mail on February 13th of 2019 --

10 A Okay.

11 Q -- to Ms. Bunce, Mr. Reed, and Ms. Preslo,
12 and a copy to Ms. Allison.

13 A Okay.

14 Q Obviously take your time to read it as
15 need be, but I want to -- my question to you, it
16 says, "Follow-up to our meeting."

17 That's a follow-up to the leadership
18 meeting?

19 A I believe so.

20 Q Okay. And it said if you look at --

21 MS. GIBSON: Go ahead and take your time
22 to read the e-mail.

23 BY MR. PERLOWSKI:

24 Q Please, as I said, take your time.

25 My question is going to be: It starts

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1 with -- at the end of the first line, it says, "We
2 have spent several hours yesterday and today
3 reviewing all the information you provided in our
4 meeting along with the P&L info in Kevlar."

5 I'm going to ask you about that.

6 A Okay.

7 Q So what P&L --

8 MS. GIBSON: Can she have just a minute to
9 finish reading it? She's still reading.

10 MR. PERLOWSKI: I'm asking her a question
11 about that one sentence.

12 MS. GIBSON: That's fine, but she wants to
13 read it for the context.

14 MR. PERLOWSKI: That's fine.

15 MS. GIBSON: Thank you.

16 A Okay.

17 BY MR. PERLOWSKI:

18 Q What P&L info in Kevlar did you review
19 prior to authoring this e-mail?

20 A From my memory, it would have been
21 something Jon provided from Kevlar.

22 Q Do you know what Jon provided in Kevlar?

23 MS. GIBSON: Objection, asked and
24 answered.

25 A I would, again, be guessing, but I think

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1 probably either two thousand eight- -- it would have
2 been Southeast P&Ls. So I don't remember the time
3 period.

4 MS. GIBSON: I'll just instruct you not to
5 guess.

6 THE WITNESS: Okay.

7 BY MR. PERLOWSKI:

8 Q Okay. Well, we talked earlier, generally
9 speaking, about what you recall Mr. Reed giving you
10 at various points in time.

11 A Uh-huh.

12 Q We also talked generally about what you
13 may -- what you might have had access to in Kevlar.

14 What I'm trying to understand is on
15 February 13th of 2019, you're saying to Ms. Bunce,
16 Mr. Reed, and Ms. Preslo that we have spent several
17 hours yesterday and today reviewing all the
18 information you provided in our meeting, along with
19 the P&L info in Kevlar.

20 So you're saying that you reviewed P&L
21 info in Kevlar. I want to try and understand what
22 P&L info in Kevlar you reviewed.

23 Did you go into Kevlar itself and review
24 P&L information either on February 12th or
25 February 13th of 2019?

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1 A (Sotto voce reading.)

2 I would just be guessing. I know that Jon
3 provided us P&Ls. I cannot remember if it was like,
4 you know, PDF P&Ls that were provided or going into
5 Kevlar to view a P&L. I do not recall.

6 Q Did Mr. --

7 A But we definitely reviewed P&Ls.

8 Q Did Mr. Reed provide you with P&L
9 information at the leadership meeting?

10 MS. GIBSON: Objection, asked and
11 answered.

12 A I don't recall if he gave us P&Ls at the
13 meeting or after the meeting. But this says we
14 reviewed them, so he gave them to us either -- you
15 know, it was a two-day meeting, so --

16 BY MR. PERLOWSKI:

17 Q Right.

18 A -- I don't remember which day.

19 Q Okay. So Mr. Reed did give you something
20 at the leadership meeting.

21 Do you recall going into Kevlar and
22 reviewing information in Kevlar as opposed to
23 reviewing information that Mr. Reed may have given
24 you?

25 MS. GIBSON: Objection, asked and

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1 answered.

2 A I do not recall going into Kevlar.

3 BY MR. PERLOWSKI:

4 Q Okay.

5 MS. GIBSON: Henry, we've been going a
6 little over an hour. You want to take a quick
7 break?

8 MR. PERLOWSKI: Yeah, I don't have -- I
9 don't have much -- I don't have that much longer,
10 but let's take five.

11 MS. GIBSON: Yeah, that was my next
12 question.

13 MR. PERLOWSKI: That's fine. No. I don't
14 have that much.

15 MS. GIBSON: There's probably not that
16 much really left of the deposition time. Okay.

17 THE VIDEOGRAPHER: Off record at 2:10.

18 (Recess 2:10-2:17 p.m.)

19 THE VIDEOGRAPHER: Back on the record at
20 2:17.

21 (Defendant's Exhibit 25 was marked for
22 identification.)

23 MR. PERLOWSKI: This is going to be
24 Exhibit 25. This was Exhibit 15 to Ms. Bunce's
25 deposition, which is why it has that.

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1 BY MR. PERLOWSKI:

2 Q Ms. Spearman, I'm showing you what's been
3 marked as Exhibit 25 to your deposition. And,
4 Ms. Spearman, I'm again going to call your attention
5 to the second page of the exhibit, which is actually
6 an e-mail from Ms. Allison on March 19th of 2019 to
7 Ms. Bunce, Ms. Preslo, and Mr. Reed, and it copies
8 you and the Arvielos.

9 And understand, take your time to take a
10 look at it, as your counsel has instructed you to.

11 My question for you is going to be: Did
12 you and Ms. Allison develop this e-mail together, or
13 did she just draft it?

14 A I don't remember.

15 Q And, I mean, obviously, feel free to take
16 your time and look at the e-mail, but it talks
17 about, you know, the changes that were announced at
18 the leadership meeting, and Ms. Allison reflects
19 some sentiments, right, in response to those changes
20 that were being announced.

21 And if you look towards the bottom of her
22 e-mail, see there's numbers 1, 2, 3, and 4 above the
23 "sincerely"?

24 A Yes.

25 Q You see that?

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1 And then right before that, it says,
2 "Please approve the following so we can advance,"
3 and then it says 1, 2, 3, and 4.

4 Do you know whether -- asking maybe a more
5 specific question: Do you remember developing these
6 requests for approval of these four items with
7 Ms. Allison, or is that something she did on her
8 own?

9 A We would have had discussions about it.
10 We were partners. I don't remember if I was
11 involved in the drafting of the e-mail.

12 Q And so is item number 1, is it just asking
13 for a different tolerance level on certain kinds of
14 loans?

15 A Yes.

16 Q Same thing with number 2, asking for a
17 different tolerance level on certain kinds of loans?

18 A Yes.

19 Q And the proposal in items 1 and 2 was
20 asking for different tolerance levels but with an
21 understanding that anything above those tolerance
22 levels, the region would cover out of its
23 compensation?

24 A Are you asking me if that's --

25 Q Yeah.

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1 A -- what it says here?

2 Q Yes.

3 Was that the proposal to NAF, to change
4 the tolerance levels, but anything above the
5 tolerance levels that you and she would cover out of
6 your comp buckets?

7 MS. GIBSON: Objection, foundation,
8 misstates testimony.

9 A I didn't draft the e-mail, but that's what
10 it says there.

11 BY MR. PERLOWSKI:

12 Q Okay. Did you -- did you approve of these
13 proposals that Ms. Allison submitted to Ms. Bunce,
14 Ms. Preslo, and Mr. Reed?

15 A Did I approve of them; what do you mean?

16 Q You mentioned that you and she were
17 partners and that you would have discussed them.

18 A Yes.

19 Q Did you agree with them?

20 A I didn't agree with any of it.

21 Q Okay.

22 A I didn't agree with them not paying since
23 my initial contract, I didn't agree with them
24 cutting our pay when we were a profitable region,
25 but I believed them that they were going to get it

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1 right eventually. And so I didn't agree with any of
2 this.

3 Q Did you --

4 A But we were trying to be part of the
5 solution.

6 Q Did you -- did you authorize Ms. Allison
7 to send her -- the e-mail that she sent on
8 March 19th of 2019?

9 A She did not need my authorization to send
10 this e-mail.

11 Q Did you ever express any disagreement with
12 Ms. Allison's proposals as -- in her e-mail of
13 March 13th?

14 MS. GIBSON: Objection, form, asked and
15 answered.

16 A We were -- as a lot of our communication
17 states, we were trying to help be part of the
18 solution. So we didn't want this, we didn't agree
19 to it, but we were -- if it was temporary, we were
20 trying to come up with a better alternative than
21 what they had suggested -- what NAF had suggested.

22 BY MR. PERLOWSKI:

23 Q But you -- okay. Fair enough.

24 A For a temporary, yeah.

25 Q Okay. So from whenever the marketing --

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1 the change in marketing expenses, whenever that was
2 adopted, whether it was in February of '19 or
3 March 1st of '19, through March 1st of 2020 --

4 A Yes.

5 Q -- you understood that if the region made
6 a marketing expense, it was going to come out of the
7 region's budget?

8 MS. GIBSON: Objection, form.

9 A Yes, that's what they told us, yes.

10 BY MR. PERLOWSKI:

11 Q Okay. And you understood that during that
12 entire year or so period of time before March 1st of
13 2020?

14 A I was expecting it to end every day --

15 Q Okay.

16 A -- because that was what they had
17 promised.

18 Q Did anyone ever tell you that it was
19 ending as of a certain day before March 1st of 2020?

20 MS. GIBSON: Objection, form.

21 A They just told us daily that they were
22 close to a solution.

23 BY MR. PERLOWSKI:

24 Q Were you ever told that you were going to
25 be reimbursed for any of the marketing expenses that

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1 the region chose to incur?

2 MS. GIBSON: Objection, form, misstates
3 testimony.

4 A Was I --

5 BY MR. PERLOWSKI:

6 Q Okay.

7 A -- ever informed that I would be
8 reimbursed, that's your question?

9 Q Were you ever told that you were going to
10 be reimbursed for any marketing expenses the
11 Southeast region chose to incur after the change was
12 announced?

13 A No. I was just expecting it to be over --

14 Q Okay.

15 A -- and not deducted anymore.

16 Q Okay. Again, from whenever the change was
17 announced, whether it was in February of '19 or
18 whether it was adopted as of March 1st of '19, that
19 next year or so period of time, you understood that
20 if a pricing exception loan was approved outside of
21 tolerances that the region was going to take a hit
22 on that loan, correct?

23 MS. GIBSON: Objection, form.

24 A Did I understand if Kelly approved a
25 concession, that it was going to come out of our

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1 pay?

2 BY MR. PERLOWSKI:

3 Q Yes.

4 A I guess I understood that, yeah. I didn't
5 agree to it.

6 Q Right, but you understood it from
7 whenever -- February of '19 or March 1st of '19
8 until March 1st of 2020; you understood that,
9 correct?

10 A I understood it was a temporary change
11 that just never ended even though they promised it
12 would.

13 Q Did anyone ever tell you that it was
14 ending on a date certain before March 1st of 2020
15 with respect to pricing exceptions?

16 A 90 days.

17 Q So after the 90 days, did you go to
18 somebody and say, hey, where's the old policy?

19 MS. GIBSON: Objection, form.

20 A Weekly.

21 BY MR. PERLOWSKI:

22 Q And what were you told?

23 A We're working on a new plan that will be
24 better than that.

25 Q Okay. And no one told you in response to

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1 your weekly question that the policy was reverting
2 back to what it was before the leadership meeting,
3 correct?

4 MS. GIBSON: What's the question? I'm
5 sorry, I didn't hear one in that.

6 MR. PERLOWSKI: Please read it back.

7 (The record was read by the reporter as
8 follows:

9 "Q Okay. And no one told you in
10 response to your weekly question that the
11 policy was reverting back to what it was before
12 the leadership meeting, correct?")

13 MS. GIBSON: No one told you what, is my
14 question. I don't --

15 BY MR. PERLOWSKI:

16 Q Did anyone tell you that the policy was
17 going back to what it was --

18 MS. GIBSON: Objection, asked and
19 answered.

20 BY MR. PERLOWSKI:

21 Q -- before the leadership meeting?

22 A There were many occasions in which they
23 said, we will go back to your contractual marketing
24 budget, yes.

25 Q As of when?

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1 MS. GIBSON: Objection, asked and
2 answered.

3 BY MR. PERLOWSKI:

4 Q You said "marketing budget." I was
5 talking about pricing exceptions.

6 A Okay. Same with that, that after the
7 90 days, it would go back to that.

8 Q Okay. And so when the 90 days expired --

9 A Uh-huh.

10 Q -- did you then go to someone and say, why
11 are pricing exceptions being deducted from our
12 compensation?

13 MS. GIBSON: Objection, asked and
14 answered.

15 A They said because they were working on the
16 new comp plan, that that would all be taken care of
17 in the new comp plan.

18 BY MR. PERLOWSKI:

19 Q Okay. So your understanding was that the
20 change with respect to pricing exceptions was going
21 to still be in effect after the 90 days expired?

22 MS. GIBSON: Objection, misstates
23 testimony.

24 A No.

25 BY MR. PERLOWSKI:

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1 Q Okay. So you think that there's a 90-day
2 window that this policy with respect to pricing
3 exceptions is going to be in effect.

4 A Right.

5 Q On the 91st day, you go -- you ask
6 someone, why is the policy change still in effect
7 or -- right?

8 You with me so far?

9 MS. GIBSON: Objection, misstates
10 testimony and slightly badgering --

11 MR. PERLOWSKI: I haven't even talked
12 about testimony yet. I'm trying to get an answer to
13 a question.

14 MS. GIBSON: Well, you're saying on the
15 91st day, and I think her testimony, if you want her
16 to read it back, is that --

17 MR. PERLOWSKI: Please stop speaking for
18 the witness. You can object. Stop speaking for the
19 witness. You're instructing the witness.

20 MS. GIBSON: I am not instructing her.

21 MR. PERLOWSKI: It's a speaking objection.
22 Stop.

23 MS. GIBSON: Hey, Henry, don't tell me to
24 stop.

25 BY MR. PERLOWSKI:

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1 Q Okay. We are going to do this. You're
2 going to answer my question.

3 So the 90 days expires --

4 MS. GIBSON: Give me an opportunity to
5 object.

6 Go ahead.

7 BY MR. PERLOWSKI:

8 Q So the 90 days expires. The policy change
9 with respect to pricing exceptions is still in
10 effect after 90 days, correct?

11 MS. GIBSON: Objection, asked and
12 answered.

13 BY MR. PERLOWSKI:

14 Q Correct?

15 A They continued to make the deductions.

16 Q Okay. When you -- you asked somebody --
17 did you ask somebody why they were continuing to
18 make the deductions after 90 days had expired?

19 MS. GIBSON: Objection, asked and
20 answered.

21 A Yes. We had weekly calls with --

22 BY MR. PERLOWSKI:

23 Q Okay.

24 A Uh-huh. Yes.

25 Q And you were told they were working on it?

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1 A Yes.

2 Q That it was going to be addressed in what?

3 A They were working towards a P&L-based
4 compensation, and the budget would be reinstated
5 with that plan.

6 Q So the budget -- so the pricing
7 exceptions, tolerances would be reinstated when the
8 new P&L model was in effect?

9 A Yes.

10 Q Okay. So you understood after the 90 days
11 expired that the pricing exceptions change would
12 remain in effect until the P&L model was
13 developed --

14 MS. GIBSON: Objection, form.

15 BY MR. PERLOWSKI:

16 Q -- and implemented?

17 MS. GIBSON: Objection, form, asked and
18 answered.

19 A No, it was one -- it was a situation,
20 Henry, where every week it was, we're working on it;
21 we're going to reinstate it. And then it was, let's
22 work on this P&L and get it implemented as soon as
23 possible.

24 So it was just an always, oh, we're just a
25 few weeks away from -- from reinstating it.

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1 BY MR. PERLOWSKI:

2 Q Okay. So they're telling you you're a few
3 weeks away from reinstating it, and they would
4 reinstate it as of when?

5 A I don't know.

6 MS. GIBSON: Objection, asked and
7 answered.

8 A I don't know. I mean --

9 BY MR. PERLOWSKI:

10 Q Okay.

11 A -- you'd have to ask them what -- when
12 they were going to do it.

13 Q I'm asking what your understanding was.

14 A And I told you.

15 MS. GIBSON: I think she's testified. Her
16 understanding may not be what you like, but she has
17 given you her understanding.

18 And you have about 17 or less minutes.

19 You actually expired the time, but you said --

20 MR. PERLOWSKI: If you want to take that
21 up with the Court, you're more than happy to do
22 that.

23 MS. GIBSON: Yeah, I will.

24 MR. PERLOWSKI: I'm sure you will.

25 BY MR. PERLOWSKI:

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1 Q And you were never told you were going to
2 be reimbursed for any pricing exception reductions
3 in your compensation, correct?

4 MS. GIBSON: Objection, asked and
5 answered.

6 A I don't recall discussing reimbursement.
7 Just, again, when it started out, it was a very
8 short period of time we thought it was going to
9 happen, so reimbursement wasn't discussed.

10 BY MR. PERLOWSKI:

11 Q So why does paragraph 123 of your second
12 amended complaint say, "all while believing she
13 would ultimately reimbursed for these expenditures"?

14 MS. GIBSON: What's the question?

15 BY MR. PERLOWSKI:

16 Q So why does paragraph 123 of your second
17 amended complaint say that you believed you would
18 ultimately be reimbursed for these expenditures?

19 MS. GIBSON: I think the document speaks
20 for itself. I think there's --

21 MR. PERLOWSKI: I didn't ask -- you're not
22 testifying, Ms. Gibson.

23 MS. GIBSON: Objection.

24 MR. PERLOWSKI: I'm asking Ms. Spearman
25 why her second amended complaint says, contrary to

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1 her testimony today, while -- "all while believing
2 she would ultimately be reimbursed for these
3 expenditures."

4 BY MR. PERLOWSKI:

5 Q Why does it say that?

6 MS. GIBSON: Objection, misstates
7 testimony, asking her questions about a legal
8 document about which she does not -- has not -- does
9 not have the legal expertise to respond to. And
10 you've asked and answered that question over and
11 over.

12 A Yeah, I just believed that -- I believed
13 them, and I believed that we were going to get to a
14 resolution quickly --

15 BY MR. PERLOWSKI:

16 Q Right.

17 A -- and that just didn't happen.

18 Q But no one ever told you that you were
19 ultimately going to be reimbursed for any marketing
20 expense and pricing exception expenditure?

21 A I didn't think that it would go on long
22 enough.

23 Q That wasn't my question.

24 MS. GIBSON: Objection, form, misstates
25 testimony.

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1 BY MR. PERLOWSKI:

2 Q Paragraph 123, Ms. Spearman, says that you
3 expended personal funds on marketing expenses and
4 pricing exceptions, "all while believing she would
5 ultimately be reimbursed for those expenditures."

6 What supports that belief that you were
7 ultimately going to be reimbursed for these
8 expenditures?

9 MS. GIBSON: Objection, asked and
10 answered.

11 A I believed that they weren't going to
12 deduct them anymore.

13 BY MR. PERLOWSKI:

14 Q Okay. Pro -- as of a certain point, the
15 deductions would stop, that's what you believed,
16 right?

17 MS. GIBSON: Objection, asked and
18 answered.

19 BY MR. PERLOWSKI:

20 Q Did you answer the question, Ms. Spearman?

21 A When it started in February, I believed
22 that it was for a period of 90 days and that we
23 would go back to having our marketing budget of
24 7 and a half bps. I believed them when they told me
25 that.

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1 MR. PERLOWSKI: Just give me five minutes.

2 THE VIDEOGRAPHER: Off the record at 2:33.

3 (Recess 2:33-2:36 p.m.)

4 THE VIDEOGRAPHER: Back on the record at
5 2:36.

6 BY MR. PERLOWSKI:

7 Q Ms. Spearman, this document was already
8 marked as an exhibit to your deposition as
9 Exhibit 5. And I want to go ahead and ask you --
10 this is -- the questions I'm going to ask you,
11 Ms. Spearman, are about your e-mail of March 19th of
12 2019, which is the first page of the document. Feel
13 free to take your time --

14 A Okay.

15 Q -- to skim through it.

16 Ms. Spearman, I'm going to ask you my
17 first question, but again, feel free --

18 A Okay.

19 Q -- to take your time to look through it.

20 My first question is going to be: If you
21 look at the second-to-last sentence of your e-mail
22 that says, "It now appears we have a solid
23 go-forward plan, and we're looking forward to
24 getting back to work on growing the Southeast," my
25 question is going to be about that, about what the

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1 solid go-forward plan was.

2 Again, take your time. For the record, my
3 question is: I want to -- if you could please
4 explain what the solid go-forward plan was, to your
5 understanding.

6 A Okay. I'm trying to determine which
7 go-forward, quote/unquote, plan it was. All of
8 these discussions back and forth in the e-mails were
9 about what would be the go-forward plan for the next
10 90 days as we help to rightsize the company. So I
11 don't know exactly which e-mail I'm referring to
12 there.

13 I'm just trying to see if it was...

14 Q And, again, take your time.

15 A I can't be certain what we were --
16 which -- if you're going to ask me specifics, I
17 can't be certain.

18 What I know that to mean is that we were
19 trying to be part of the solution, and so the
20 directive that we had been given, we decided to say,
21 okay, for 90 days, if that's what you need to
22 rightsizes the company, I guess that's the go-forward
23 that was being referred to.

24 Q You would agree with me 90 days isn't
25 referenced in your e-mail, right?

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1 A It's not referenced in that sentence.

2 Q What is -- what is WA PE?

3 A Where do you see that?

4 Q It's in a number of places in your e-mail,
5 talking -- appears to be a recap in the bullet
6 points. So there's a bullet points recap --

7 A Uh-huh.

8 Q -- and it talks about you manage to a WA
9 PE of 22 bps with a PE tolerance of 200 bps. And
10 then --

11 A Yes, weighted average.

12 Q Okay. So is it fair to say that by virtue
13 of this -- the e-mails -- this e-mail that we're
14 looking at, that you and Ms. Allison had proposed a
15 different interim solution but that that interim
16 solution that was proposed was rejected?

17 A There were several interim solutions that
18 were discussed back and forth.

19 Q And were any of the interim solutions
20 accepted by NAF?

21 A I'm not sure what you mean by "accepted."

22 Q Were any of the changes that you and/or
23 Ms. Allison had proposed, were any of them adopted
24 by NAF after the leadership meeting?

25 A There was never an amendment or change to

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1 our agreement, so I don't know that either side
2 really ever approved anything.

3 Q What I'm saying, Ms. -- changes were
4 announced by NAF with respect to pricing exceptions
5 and marketing expenses. You and Ms. Allison --
6 and/or Ms. Allison may have proposed different
7 changes, like, okay, instead of doing it this way,
8 we propose doing it a different way.

9 A Yes.

10 Q Did any of the proposals that you and she
11 made, did any of those take --

12 MS. GIBSON: Objection, form, asked and
13 answered -- sorry.

14 BY MR. PERLOWSKI:

15 Q -- where they were adopted by NAF after
16 you made the alternative proposal?

17 MS. GIBSON: Objection, form, asked and
18 answered.

19 A It was pretty convoluted, so I don't know
20 that one set proposal was ever adopted or accepted.

21 BY MR. PERLOWSKI:

22 Q Okay. I don't think I have any other
23 questions, Ms. Spearman.

24 MS. GIBSON: That concludes the
25 deposition.

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1 THE VIDEOGRAPHER: We're off the record at
2 2:43.

3 (Deposition concluded at 2:43 p.m.)

4 (Signature reserved.)

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The following reporter and firm disclosures were presented by me at this proceeding for review by counsel:

REPORTER DISCLOSURES

The following representations and disclosures are made in compliance with Georgia Law, more specifically:

Article 10 (B) of the Rules and
Regulations of the Board of Court Reporting
(disclosure forms)

OCGA Section 9-11-28 (c) (disqualification
of reporter for financial interest)

OCGA Sections 15-14-37 (a) and (b) (prohibitions against contracts except on a case-by-case basis).

- I am a certified court reporter in the State of Georgia.
 - I am a subcontractor for Veritext.
 - I have been assigned to make a complete and accurate record of these proceedings.
 - I have no relationship of interest in the matter on which I am about to report which would disqualify me from making a verbatim record or maintaining my obligation of impartiality in compliance with the Code of Professional Ethics.
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 - Transcripts: The transcript of this proceeding as produced will be a true, correct, and complete record of the colloquies, questions, and answers as submitted by the certified court reporter.
 - Exhibits: No changes will be made to the exhibits as submitted by the reporter, attorneys, or witnesses.

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1 - Password-Protected Access: Transcripts and
2 exhibits relating to this proceeding will be
uploaded to a password-protected repository, to
which all ordering parties will have access.

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1 CERTIFICATE
23 STATE OF GEORGIA:
45 COUNTY OF FULTON:
67 I hereby certify that the foregoing
8 transcript was taken down, as stated in the caption,
9 and the colloquies, questions and answers were
10 reduced to typewriting under my direction; that the
11 transcript is a true and correct record of the
12 evidence given upon said proceeding.13 I further certify that I am not a relative
14 or employee or attorney of any party, nor am I
15 financially interested in the outcome of this
16 action.17 I have no relationship of interest in this
18 matter which would disqualify me from maintaining my
19 obligation of impartiality in compliance with the
20 Code of Professional Ethics.21 I have no direct contract with any party
22 in this action and my compensation is based solely
23 on the terms of my subcontractor agreement.24 Nothing in the arrangements made for this
25 proceeding impacts my absolute commitment to serve
all parties as an impartial officer of the court.14)22.
15
16
17
18
19 ROBYN BOSWORTH, RPR, CRR, CRC, CCR-B-2138
20
21
22
23
24
25

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1 To: MaryBeth Gibson, Esq.
2 Re: Signature of Deponent Gina Spearman
3 Date Errata due back at our offices: 30 days
4

5 Greetings:

6 This deposition has been requested for read and sign
7 by the deponent. It is the deponent's
responsibility to review the transcript, noting any
changes or corrections on the attached PDF Errata.
8 The deponent may fill out the Errata electronically
or print and fill out manually.

9
10 Once the Errata is signed by the deponent and
notarized, please mail it to the offices of Veritext
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12 When the signed Errata is returned to us, we will
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13 If the signed Errata is not returned within the time
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1 ERRATA for ASSIGNMENT

2 I, the undersigned, do hereby certify that I have
read the transcript of my testimony, and that

4 ____ There are no changes noted.

5 ____ The following changes are noted:

6 Pursuant to Rule 30(7)(e) of the Federal Rules of
7 Civil Procedure and/or OCGA 9-11-30(e), any changes
in form or substance which you desire to make to
8 your testimony shall be entered upon the deposition
with a statement of the reasons given for making
9 them. To assist you in making any such corrections,
please use the form below. If additional pages are
10 necessary, please furnish same and attach.

11 Page No. _____ Line No. _____ Change to _____

13 Reason for change _____

14 Page No. _____ Line No. _____ Change to _____

16 Reason for change _____

17 Page No. _____ Line No. _____ Change to _____

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15 Reason for change _____

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17 _____

18 Reason for change _____

19 _____

20 DEPONENT'S SIGNATURE

21 Sworn to and subscribed before me this _____ day of
22 _____, 20 _____.
23 _____

24 NOTARY PUBLIC

25 My Commission Expires: _____

[& - adopted]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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